A REVIEW

OF THE PRESENT POSITION OF

BANKRUPTCY LEGISLATION

IN

ENGLAND AND THE UNITED STATES,

PRESENTED TO THE

CHAMBER OF COMMERCE OF THE STATE OF NEW-YORK,

By Mr. D. C. ROBBINS.

Ordered to be Printed by the Chamber, November 1st, 1883.

NEW-YORK:
PRESS OF THE CHAMBER OF COMMERCE.
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HENRY BESSEY, PRINTER,
No. 47 Cedar Street, New-York.

PREFACE.

On the second of last November I had the honor of presenting to this Chamber a "Statement of the present condition of Bankruptcy Legislation in Great Britain, France and the United States." The document was ordered to be printed for distribution, and an edition of one thousand five hundred copies was published, nearly the whole of which have been applied for, and I am still receiving applications. It may gratify the Chamber to learn that some of the highest authorities in this and other countries have expressed their sense of the importance of the document, and several Senators and Members of the House of Representatives made considerable use of the pamphlet.

The following letters are a few selected from many received :

Barron Block,
162 St. James Street and 49 St. John Street,
Montreal, *6th December*, 1882.

D. C. Robbins, Esq.,
Chamber of Commerce, New-York:

My Dear Sir: Will you kindly send me a copy of your Report on the present condition of Bankruptcy Legislation in Great Britain, &c.

I am preparing a bill on the subject for the Dominion Parliament, and will esteem it a great favor to receive a copy of your Report.

Yours sincerely,

D. Macmaster.

BARRON BLOCK,
162 St. James Street and 49 St. John Street,
MONTREAL, 11*th December*, 1882.

MY DEAR SIR: I am much indebted for your valued favor of 9th instant, and for copy of your Report to the New-York Chamber of Commerce. With your permission I will take the liberty of addressing you further upon the subject of Bankruptcy, as it is quite clear you have collected much valuable information, and have a grasp of it that enables you to speak with authority.

I send you two copies of our Journal of Commerce, in which your Report is favorably reviewed by one of the best financiers of our day, Sir FRANCIS HINCKS, Ex-Premier and Financial member of Canada.

With many thanks, I am, sir,
Yours sincerely,
D. MACMASTER.

D. C. ROBBINS, Esq.,
Care of MCKESSON & ROBBINS,
Wholesale Druggists, New-York. P. O. Box 1860.

Having received a request from the British Consul in New-York to furnish him with a copy of my report, and my views on Bankruptcy, "for the information of Her Majesty's Government," I forwarded a copy of the pamphlet and a letter on the subject, to which I received the following reply:

NEW-YORK, *February* 28*th*, 1883.

GENTLEMEN: Permit me to thank you extremely for your kind letter of the 19th instant, and for the very interesting information which accompanies it.

I am, gentlemen,
Very faithfully yours,
PIERREPONT EDWARDS,
H. B. M. Consul.

Messrs. MCKESSON & ROBBINS, &c., &c.

REVIEW.

Present position of the Bankruptcy question.

We find ourselves to-day in the same position as last year with regard to Bankruptcy legislation; no law was passed at the last Session of Congress, while the absolute necessity of formulating such a measure is universally admitted. This autumn has seen many failures, some of them complicated by the fact of the debtors possessing property in several States, and, consequently, demonstrating the want of a uniform national law. The reason of the failure last session to arrive at a satisfactory solution of the subject, was chiefly due to the attempt of certain important mercantile firms, in Boston, to force upon Congress a measure drawn specially in their own interests, and unsuited to the wants of our interior States. Notwithstanding the active pressure brought to bear, that proposal was defeated. It, however, lead to the defeat of a very carefully prepared bill, introduced in the Senate, and so the matter stands over until next session. I earnestly hope both parties will have learned wisdom from this result. No combination of firms, however eminent or wealthy, can expect to pass a measure simply prepared in their own interests. In the coming session I hope we shall not attempt to interfere with the duties and responsibilities of Congress, by asking it to adopt ready-made legislation, however able the draftsmen employed may have been. The commercial classes, and especially this Chamber, will assist the action of the Legislature, if we can agree on the principles on which future legislation should be founded, and submit the same for the consideration of both Houses.

Reasons of failure last Session.

The English Act. How passed.

Since we last met, the subject has been most ably dealt with by the British Parliament. Whether the new English Act meets popular approval cannot yet be stated, but all parties agree that never was a measure carried

The English Act. How passed. *Continued.*

through Parliament that had been so thoroughly sifted. I shall have occasion to refer to this bill later on. I wish now merely to draw your attention to the manner in which it was passed. It was referred to a Grand Committee; that Committee consisted of leading mercantile and legal authorities, who are Members of the House of Commons. The bill, after the thorough discussion it had received at the hands of this Committee, passed both the Houses of Lords and Commons without further alteration. I venture to think, that a precedent so important should not be overlooked, and if a Joint Committee on Bankruptcy, of both Houses, could be nominated, any measure adopted by them would command respectful consideration. The plan of introducing rival bills in the two Houses, only provokes an *esprit du corps* of each in favor of their own, and so renders any practical result the more unlikely.

Importance of a Joint Committee.

It is of importance that the matter should be settled now. Every year adds to the large number of undischarged debtors, whose influence is a powerful factor in moulding any new measure. Preceding Acts have generally been delayed until some great panic, and the consequence has been that a one-sided Act, in the debtor's favor, has been passed.

Outline of the English Act.

The new law, formulated by the British Parliament, differs from the old, described in my review of last year, chiefly in that it allows no liquidations by arrangement. It establishes no new Court, but places the jurisdiction, in the chief centres, in the High Court, and in the County Courts in the country districts. By so doing, the measure avoids that which must be regarded as one great blot of the Lowell Bill, the creation of cheap judges.

On an occasion when Lord Beaconsfield was called upon to appoint a chief of the Stationery Department of the British Government, a post involving considerable technical knowledge, his appointment was criticized on the ground that he ought to have appointed some one in the trade. His answer was that the salary was low, one which no successful business man would accept, so that he had the choice of appointing a man who had retired from business, or a man from whom business had retired. I maintain that the proposal to appoint judges at a salary

of $2,000 a year, gives the same alternative. We must either be content with superannuated practitioners, or those who have been unsuccessful. Cheap judges mean jobbery, especially where the judge and the administrator are combined, as in the proposed Commissioners in Bankruptcy. Importance of first-class Judges.

Another great change in the administration of the English law is the appointment of *official receivers under the control of the Board of Trade.* This is an amendment we cannot adopt in this country, for two reasons: In the first place we have *no official Board of Trade,* to whom the power could be safely delegated, and, besides, the country is too vast for any such centralized method.

Let us now consider the outline of the scheme adopted by the British Parliament. The act applies to England only, and not Ireland or Scotland.

Analysis of the English Act.

The acts of bankruptcy are included in eight classes: 1. Making an assignment for benefit of creditors. 2. making a fraudulent conveyance. 3. Or a fraudulent preference. 4. Leaving the country and absenting himself in order to defeat his creditors. 5. Suffering an execution to be issued against him. 6. Filing a declaration of insolvency. 7. Failing to secure or compound a debt after service of a bankruptcy summons. 8. If he gives notice of suspension.

As soon as an act of Bankruptcy is proved, the Court may, upon petition of any creditor, make a receiving order.

No creditor can present such a petition unless his debt amounts to $250. Creditors may jointly apply to the Court.

The debt must be a liquidated sum.

The petition must be presented within three months of the act of Bankruptcy. The debtor must have been domiciled in England. The security for a petitioning creditor's debt must be either given up or written off.

Proofs of the facts of the petition are to be verified by affidavit. No petition can be withdrawn without leave of the Court.

The debtor's petition need only allege insolvency.

On the making of a receiving order, the official re-

Analysis of the English Act. *Continued.*

ceiver shall take possession of all the assets, and the remedies of creditors are suspended, subject to the Court's order. A manager may be appointed in cases where it is important to keep a business running.

A receiving order is to be advertised as soon as possible, and the first meeting of creditors called.

The debtor must make out and submit a balance sheet and list of creditors. In all cases *before* the first meeting of creditors, a public examination of the debtor shall take place, which may be adjourned.

Any creditor who has tendered a proof may examine the debtor ; also the official receiver.

The Court may also independently examine.

At the first meeting of creditors they may, by *special* resolution, entertain a proposal for composition, which must be accepted at one meeting and confirmed at another, held not less than seven days afterwards. They may, either before or after the meeting, apply to the Court to confirm it. Before approving a proposal, the Court shall hear the report of the official receiver.

If the composition is not of reasonable amount, the Court shall not approve, and if it subsequently ascertains that its consent was improperly obtained, the Court may set aside the composition.

When the Court approves, it shall set its seal to the proposal.

A proposal thus accepted and approved, shall bind all creditors.

A certificate of the official receiver that a composition has been accepted and approved, shall, in the absence of fraud, be conclusive as to its validity.

Creditors may, by ordinary resolution, add to or vary any composition previously accepted by them.

A composition may be enforced by the Court.

If default is made in payment of any instalment, or if a composition cannot be carried out, the Court may adjudge the debtor a bankrupt.

When a receiving order is made, if no composition or scheme of arrangement be carried, the Court shall adjudge the debtor a bankrupt.

Notice of the order must be advertised. Thereupon the creditors may appoint any person (creditor or not) to be trustee, or they may leave the appointment to the committee of inspection. The trustee shall give security to the Board of Trade, who shall, if satisfied, certify that the appointment has been duly made ; unless they object to the appointment, as not made in good faith. Such objection may be appealed against.

The appointment takes effect from the date of the certificate. The Board of Trade may appoint a trustee in cases where none is appointed by the creditors.

Creditors may appoint a committee of inspection, who shall act and vote by a majority. Members may resign. Their bankruptcy shall disqualify. Vacancies may be filled. Continuing members may act. Where no committee of inspection is appointed, the authority vested in them is to be exercised by the Board of Trade.

The power of accepting a composition is not withdrawn from creditors by the debtor's bankruptcy, but may be exercised at any time after adjudication, with the approval of the Court.

The Court is to exercise entire control over the debtor during his bankruptcy. He is to aid, to the best of his power, in the realization of his estate, in which, if he fails, he may be punished for contempt of Court.

The Court may order the debtor's arrest in instances where he is about to abscond, or remove his goods, or otherwise defeats the action of his trustee.

Any person believed to be able to give evidence as to the estate may be examined by the Court.

Persons indebted to the estate may be ordered to pay to the receiver direct.

The bankrupt may apply for his discharge at any time after the adjudication, but it shall not be granted,

If he has not kept proper books of account, or

If he has continued trading after knowledge of insolvency ; or

If he has contracted debts which he knew he could not pay ; or

Analysis of the English Act. *Continued.*

If his failure has been caused by rash and hazardous speculation ; or

If he has put his creditors to unnecessary expense by frivolous and vexatious defence to actions ; or

If he has given undue preferences within three months; or

If he has been bankrupt before, or committed any misdemeanor under the Debtors' Act, or breach of trust.

The official receiver's report is to be *prima facie* evidence of the facts contained in it. Any creditor may oppose.

If the bankrupt gets no discharge a judgment is to be entered against him by the official receiver for the unpaid balance, on which execution shall not issue unless he has acquired property available for his debts.

Any undischarged bankrupt obtaining credit to the extent of $100 commits a misdemeanor.

Bankruptcy disqualifies a man from sitting in the House of Lords or Commons, or any official position.

Where debts are afterwards paid in full, bankruptcy may be annulled.

Provision is made for proof of debts by affidavit.

Certain debts have priority, such as wages of clerks and workmen, not exceeding $250 in any one case.

The following property is exempt :

1. Property held in trust.

2. A workman's tools.

3. The furniture and bedding of $100 value.

All creditors' rights are restrained upon the debtor's bankruptcy.

Any settlement made within two years previous to the bankruptcy is void.

All preferences by an insolvent are void.

The trustee is to take possession of the estate as soon as possible. Provision is made for the case of Clergymen and tenants for life.

There are the usual clauses as to distributing the estate.

Power is vested in the Board of Trade to appoint official receivers, whose status and duties are defined.

The receiver's duties have relation both to the conduct and estate of the debtor.

The receiver may administer oaths.

No appointment of a trustee ousts the receiver's duty of reporting to the Court as to the debtor's conduct, and for this purpose the trustee is bound to furnish every information required.

The official receiver must—

1. Investigate into the debtor's conduct, and report to the Court, whether he has infringed the Act or committed any crime under the Debtor's Act. Also, to furnish such information as the Board of Trade may require. Also,

To act as *interim* receiver.

To summon and preside at first meetings.

To issue forms of proxy.

To report to creditors.

To advertise receiving orders.

The clauses as to the trustee's remuneration, also as to costs, are similar to the existing law, but the trustee is bound to pay over all amounts in his hands to the Board of Trade; and if he keeps more than $250 in hand for more than ten days, he shall pay interest.

The expenses of the Board of Trade in carrying out the Act are to be paid out of the bankruptcy funds.

Every trustee shall twice a year render an account of his stewardship, which shall be audited.

The Board of Trade is to exercise a general control over trustees.

The clauses as to the final release of trustees and the authority of creditors over the trustee are the same as in the preceding Act.

The entire jurisdiction in bankruptcy is transferred from the existing Courts to the High Court and the County Courts. All inferior officials are abolished and their

Analysis of the English Act. *Continued.*

duties abrogated. The minor duties of the Court are to be exercised by the Registrars as follows :

1. To hear petitions and make receiving orders.

2. To examine the debtor.

3. Grant orders of discharge.

4. Approve compositions.

5. Make *interim* orders.

6. To exercise such jurisdiction as is ordinarily exercised in Chambers.

7. To hear and determine unopposed petitions.

8. The Registrar is not to have power to commit for contempt of Court.

The Courts empowered under this Act may settle all questions of priorities. Their action shall not be enjoined by any other Court. Issues may be tried before juries. The Court has power to make rules.

Provision is made in the act for small bankruptcies, with assets under £300.

The Act also contains a number of supplementary provisions and formal clauses, chiefly taken from the existing acts and orders.

Opinion of the English Press.

The *London Times* thus expresses English public opinion on the subject of the new Act :

"The measure will come into operation on the 1st of January next, and it is worth while taking notice of the chief changes which it will make. It starts from the principle that Bankruptcy should not be made so easy and convenient a process as it is under the Act of 1869. It proposes to treat a man who cannot meet his debts, and who seeks to be discharged from them, very much in the same way in which an officer in the mercantile marine holding a certificate is treated if he lose his ship. There is to be in all cases an examination of the bankrupt, and, what is of still more consequence, the examination is to

Opinion of the English Press. *Continued.*

be of a public character. In many other ways, too, will the path of the debtor be made rougher than it is; but, in saying that there is to be a public examination conducted in Court, we have indicated one of its chief, if not the chief of its features. Liquidations by arrangement, as now known, which are about five times as numerous as bankruptcies, will cease to exist; and though creditors may accept a composition or a scheme of arrangement, the approval of the Court will be requisite to its validity, and if the terms of the scheme be not reasonable or calculated to benefit the general body of creditors, the Court will have full discretion to refuse its approval. Another marked feature of the bill is the creation of a totally new officer, the official receiver, who is to be appointed by the Board of Trade, and whose duty it will be to investigate the conduct of the debtor, to report to the Court and the Board of Trade, and to take part, if necessary, in the public examination of a debtor. This official will also act as *interim* receiver of the debtor's estate, pending the appointment of a trustee. A leading object of the measure is to put an end to the waste which has so long gone on with respect to bankrupts' estates; and a large part of the bill is directed to prevent frauds by trustees, or the accumulation in their hands of sums properly belonging to creditors. If we were to describe briefly the spirit of the measure, we should say THAT IT AIMED AT SUBJECTING THE DEBTOR TO A RIGOROUS EXAMINATION AND THE TRUSTEE TO CLOSE SUPERVISION. The bill contains novel principles; but it is also a return to the much contemned system of officialism. It is, no doubt, a sincere attempt to grapple with great evils; and if, like so many other Bankruptcy measures, it fails to satisfy expectation, general despair of doing much good by legislation will be the probable, and even the reasonable result."

As many gentlemen interested in the subject may like to consult the exact words of the new law, it is proposed to issue the measure verbatim at an early day.

Now, while I beg to be allowed to express my approval of the English Act, I fear public opinion here is not yet educated up to a standard which would justify Congress

What can be adapted to this country, and what not.

in formulating such a law for this country. There are, however, some leading features which might be adopted: 1st. That no compromise between the debtor and his creditors be permitted, without the Court's approval. 2d. That commercial irregularities be criminally punished. Such punishment should not rest with the creditors, or be at the cost of the estate, but should be administered in an ordinary criminal Court, conducted by a public prosecutor. 3. That all dishonest dealing between debtors and creditors, such as fraudulent preferences, proving fictitious debts, making away with assets, embezzlement by trustees, receivers or others, be treated as misdemeanors and criminally punished.

Those members of the Chamber who remember the sketch of the English Act of 1869, will observe the difference between that and the existing law. The English Court of Bankruptcy, as now constituted, has but one door through which all debtors must pass. It has no side entrance, such as the private liquidation clauses, enabling a debtor to escape, at once, his debts and the consequences of his misconduct.

In my last pamphlet, I added a sketch also of the French law. It will be observed how much the French law, which I took occasion to recommend, has been followed by Mr. CHAMBERLAIN in formulating his bill. The position occupied by the *Juge Commissaire* is filled by the official receiver, and the functions are almost entirely similar.

Another most important point is the public examination of the debtor by the Court. Such a discipline is most important. It educates public opinion to a higher standard of right and wrong in the relations of debtor and creditor, and may often give salutary warning to those who are thoughtlessly, if not wrongfully involving themselves in liabilities they cannot meet. Such a system will check the universal taste for gambling in stocks and produce, by treating failures so caused as punishable crimes.

In one respect Mr. CHAMBERLAIN's bill is a compromise between the official and unofficial systems. The creditors can deal with the estate as they please. They may or

may not appoint a trustee, but the Court retains entire jurisdiction over the debtor.

What can be adapted to this country, and what not. *Continued.*

Perhaps this scheme may afford a hint for our legislators as to how to meet the views of contending parties.

Another point, on which I cannot suggest following the English Act, is in its proposal to attach the future earnings of the debtor. Such clauses only induce unnecessary suffering on the debtor, without producing any return to the creditor. My opinion, in fact, is this: if the debtor has rendered himself criminally responsible, he should be criminally punished; if not, I would release him. Mercantile affairs here, especially in the West, are subject to more sudden and serious alternations of inflation and depression which may overwhelm the most wary, and in this case I think any proposal to follow a debtor's future earnings would be unwise. All merchants know that the per centage of bad debts at the present time is small, in well conducted businesses not over one per cent. on the average of sales, and if we lose the one per cent., it would be no serious loss. A Bankrupt law which will check bankruptcies will be of much more importance to the mercantile community than one well adapted to collecting assets.

As to the question of a receiver's order, there are a class of large importers and distributers who give large credits, and to whom it may be of importance to seize the assets of a failing debtor before they disappear. I think that the English Act presents an excellent model. Where it can be shown to the Court, on *prima facie* evidence, that the debtor has committed an act of bankruptcy, facilities should be allowed the creditor to obtain a receiver's order without delay. Probably Congress would impose a condition of giving bonds to avoid injustice to a solvent trader.

A possible compromise.

Having now sketched the position of the Bankruptcy question down to the present time, I beg leave to say a few words about the future. I have said that in my opinion, if this question is to be settled at all, it must be by a compromise. Neither the supporters of the Senate bill or of the LOWELL draft can expect to carry their views without some consideration for their opponents. Last session taught us that, and I now propose to

A possible compromise, *Continued.*

indicate what may be a reasonable compromise between the two parties who successfully opposed each other last session. In so doing, I think we must shake ourselves clear of all existing drafts. There is no magic in a formula of words. We must get at the principles which underlie the two measures, and see how they can be blended. And first, as to the appointment of a receiver, I think this should be made as simple as possible, when the debtor, being a trader, has committed act of Bankruptcy, but I would exclude farmers, graziers and agriculturists from the act. These classes, by the very nature of their business, only come into money at certain seasons of the year. Their creditors know this, and virtually give them credit on that basis.

Suggestions for the new law.

Subject to this, I would go quite as far as the LOWELL bill, in enabling the creditors to get hold of an insolvent debtor's goods at once. The real rascality begins when insolvency becomes inevitable. Then it is that preferences are created, goods secreted, and relations and friends favored. Then it is that debtors try to put something away, instead of giving it up bravely and honestly. This should be prevented, and a receivership is the only means. As to the question of judges, I sincerely hope the proposal of the Senate bill, relegating the jurisdiction to the Federal Courts, will be maintained. The appointment of cheap judges, of Commissioners in Bankruptcy, a sort of hybrid between a judge and a registrar, is sure to bring in all the abuses which made the last Act so obnoxious. But on the main point, as between the Senate and LOWELL bills, I would suggest the following compromise: Let the creditors take the estate, and let the Court deal with the debtor. If creditors mismanage the liquidation they will suffer, not society at large; but if creditors make a bargain with a dishonest debtor, and his friends, in consideration of a few cents in the dollar, are allowed to compromise mercantile fraud, then society is injured, fraudulent debtors go unpunished, and the tone of commercial morality is lowered. Under no circumstances would I trust the creditor to compromise with the debtor without the Court's supervision.

There should be in such case, 1st, a private examination by the receiver or other officer; 2d, a report as to the

debtor's trading ; 3d, a public examination, in which any creditor might participate. Then and then only should a composition be conformed and a release granted.

I have my doubts about the advisability of creditors' trustees, but that involves no principle. I proved in my last pamphlet that, whenever the law has left any duties to creditors, they either neglect or ignore them. The moment a man fails, a movement begins to get control of his estate ; creditors are bribed, threatened and bulldozed to obtain these proofs and powers. How often it succeeds. What is the consequence? The trustee proceeds to make a good thing for himself, and to consider how much he can get out of it. Still, this loss only falls on creditors. If they prefer their own mismanagement to that of a responsible officer under the Court, let them have it ; only let us keep clear of all private compositions, bargains or arrangements between debtor and creditors, without the assent of the Court.

I ground my objection, on the broad principles of public justice, which underlie the very fabric of society. However important it may be to the individual creditors concerned in an estate that they receive a good dividend, it is much more important to society that a debtor, who has committed mercantile fraud, should be publicly punished. There are certain acts which should be incorporated in a penal bankrupt code. A firm engaged in a legitimate commercial business, who goes out of it and speculates in other produce and fails, ought to suffer a public penalty. Thus, if a hardware firm gamble in mines, a dry goods firm dabbles in real estate, a drug merchant embarks or speculates in produce or stocks, the money lost is not their own, but funds advanced by bankers and others on their notes, under the belief that they are doing a legitimate business. When they fail, the injury is not confined to the creditors ; public confidence is shaken, support is withdrawn from other good firms, and workmen are thrown out of employment. Thus the ripple of one man's evil act extends till it reaches from the banker to the mechanic. I claim, therefore, that as society, as a whole, is injured by such conduct, society, as a whole, has a right to scrutinize the conduct of every man who fails, and to inflict condign punishment on those who

Suggestions for the new law. *Continued.*

take advantage of the ordinary credit of trade and use it for other purposes. But there are many other acts, of frequent occurrence, in relation to insolvencies, to which even respectable firms will stoop, because, being outside the pale of statutory misdemeanors, public morality has become deadened in respect to them. I refer specially to such as proving excessive debts on insolvent estates. Many traders imagine that as long as they receive only one hundred cents on the dollar, there is no fraud in claiming such an enlarged indebtedness as will pay the original debt by the dividend on the excessive amount. In my last pamphlet I referred to a notable case, and will now only say, that even among firms believed to be respectable, such practices are far from uncommon.

Another most common practice is for a failing debtor to put away all he can; the wife is often *particeps criminis* in the transaction, and the well-known leniency of American juries, where women are concerned, has favored such attempts. Deeds of gift, payment by husband to wife of fictitious debts, these and many other frauds are practiced on insolvent estates with impunity.

What is the remedy? I say a severe law with a highly disciplinary code. Why do you punish the man who steals your watch, and let him off scot free who buys goods he never can and never intends to pay for? Is there any gradation of wrong between the two acts? I must confess I see none. Another very common fraud is one practiced by a conspiracy of several creditors with the debtor, whereby the influence of large creditors is brought to bear on the small ones so as to carry a trifling composition, while the debtor has made a secret bargain or preferred his larger creditors.

The whole system of preference is wrong. I do not say that in some limited instances under the Court's jurisdiction it might not be permitted, but I do say, that the present system which allows the debtor uncontrolled power in the matter is a great evil. The consequence is often thus—where a man has fraudulently used trust-money and failure overtakes him, he compounds his fraud at the cost of other innocent creditors, whose dividends are milked down to make up the sum which he has wickedly misused. Two evils result. The crime goes

unpunished and the creditors suffer. I venture to hope that as France and England have both brought the relations of debtor and creditor within the limits of a precise code, that we shall do the same, and so build up a higher tone of commercial morality than that which, I regret to say, at present exists in this country.

Still, the question of preferences is one which should be left to the discretion of the Court.

Since the above pages were set up in type, I have received a treatise on the law of Bankruptcy, published in London last month, which contains a singular confirmation of the observations which I had already written, as follows :

It is generally admitted that the two main, and at the same time distinct, objects of any good Bankruptcy law are—(1) An economical and honest administration of bankrupt estates, with a view to a fair and speedy distribution of such estates among the creditors whose property they are ; and (2) the improvement of the general tone of commercial morality, by promoting honest trading and lessening the number of failures.

Such being the case, it may be freely confessed, that the Bankruptcy Act of 1869 has proved utterly unsatisfactory.

The causes for the defects of the Act of 1869 seem to be almost as much upon the surface of the Act as were the defects themselves. It favored debtors at the expense of creditors. By the Act no sufficient provision was made for anything in the nature of an impartial or independent examination into the cause of each bankruptcy, and the conduct of each bankrupt. Such investigations, perfunctory and inadequate as they generally were, were thrown upon the creditors, contrary to all sound policy or principle. The provisions for the punishment of misconduct were altogether insufficient ; and the application of those provisions, instead of being left with responsible authorities, were left almost entirely with the creditors, who in many cases might, no doubt, be interested in hushing up the very questions which they were expected to investigate ; while the arrangements for the supervision and control of the persons entrusted with the administra-

tion of estates were so defective, that practically they could do what they liked.

To remedy, in some measure, these manifest evils, the Bankruptcy Act of the present year—the provisions of which are discussed in the following pages—has been passed. It is, roughly speaking, a return to what is commonly called the "official system." In the year 1831, bankruptcy affairs were in a state of chaos, and a system of official administration was introduced, in the form of official assignees attached to the London Courts. After receiving several modifications, however, and being generally condemned, the scheme in question was totally abolished by the Bankruptcy Act of 1869, since which time reliance has been placed on voluntarism, which has been found to be equally impracticable.

In the Act just passed, the system of officialism is again resorted to, but the evils which previously rendered its trial a failure, have, it is hoped, in the present instance been carefully avoided. One thing has been shown most clearly ; that is, that the reverse of the official system, as exemplified in the system of 1869, was a mistake. It was very plausibly argued before the alteration was made, that creditors would look after their interests much more keenly than paid officials. It was urged that the wisest course was to trust to the self-interest of the creditors. But it was not seen that the interests of the creditors, though they would be benefited by the prompt payment of a handsome dividend, were more injured than otherwise in dangling after a debtor. In the case of heavy failures and large debts, it might be well worth the creditor's while to devote a considerable amount of time to the recovery of his debt ; but in four-fifths of the bankruptcies which occur a busy creditor, in the absence of special circumstances, found it to his advantage to put down what the bankrupt owed him as a bad debt. That being so, the creditors were content to leave their affairs in the hands of any one who would look after them. A rapacious class of professional trustees grew up in consequence, and along therewith a scandalous proxy system. Notwithstanding many and great scandals in the old official administration, therefore, owing to the mode in which it was formerly conducted, it was doubtless free

from a large number of the evils with which creditors have lately had to contend; and it is certain that the dividends were larger under the official than under the voluntary system. The chief reason of the failure of the former official system appears, in fact, to have been that it was only under the control of the Courts, and not of a responsible department. The present Act avoids that difficulty, and at the same time strikes at the root of those evils which have grown up under the voluntary system of 1869, by causing the administration of the estate in every case to be carried on under the direct supervision of an official nominated by the Board of Trade. In fact, an independent and impartial examination is the cardinal principle of the new bill. The essential points of the scheme are that there must be in cases where a person is unable to pay his debts a public inquiry into the circumstances, and a public official to conduct that inquiry who is attached to one of the departments of state, so as to be responsible to public opinion in the House of Commons.

The following copy of a letter addressed, by request, to H. B. M. Consul, under date of February 19, 1883, is respectfully submitted as a concise statement of the general situation:

[COPY.]

NEW-YORK, *February* 19, 1883.

Honorable PIERREPONT EDWARDS,
H. B. M. Consul at New-York:

DEAR SIR: In reply to your special inquiry, under date of February 16th, for our views on the subject of Bankruptcy legislation, we beg to state that, in our opinion, bankruptcy laws as existing and as proposed in Great Britain and elsewhere in Europe, are specially applicable to mercantile communities, and they are not suitable for our interior agricultural districts, for the reason that forced sales of real estate or other property, in sections remote from city markets, result generally in practical confiscation; while in and near our trading centres property of all sorts will sell readily at fair value, and an estate is easily liquidated; but notwith-

standing this, we are of opinion that we do want a good Bankruptcy law for the whole country. A good law is wanted in our commercial or trading States, not so much for the collection of debt as for the discouragement of gambling in stocks and produce, and that recklessness in trade, which is on the increase. A suitable law is required for the formation of sound principles in trading and in settlement. It is universally conceded that losses by insolvency in trade, when legitimately conducted in our States under our present system of short credits and frequent settlements, are less than one per centum, and very prudent and careful merchants believe that the sum total of all losses in all transactions which are legitimate is less than one-half of one per centum. Our Federal Constitution, as you are aware, is a written one, and hence it lacks the elasticity of the British system. It specially calls for uniform laws on the subject of Bankruptcy ; and the problem thus far has always been to make a universal law that will apply to the varying conditions of our several States.

In 1881, the Judiciary Committee of our National Senate appointed a special committee of three to consider this subject ; and this committee, after a twelve-months' correspondence with all sections of the country, and a careful consideration of the subject, reported a simple creditors' bill or Bankruptcy Act of nine sections, which will be found in full in a pamphlet presented herewith.

This proposed law was rejected by the Senate in December, 1882, by a vote of thirty-four against thirty, as we think unfortunately, because it appears to us that while this proposed Act was a new departure in Bankruptcy legislation, and therefore imperfect, as compared with such codified measures as exist in Great Britain and elsewhere, the plan proposed did take perhaps the only tenable ground under the circumstances in which we as a nation are placed.

The proposed law was a simple bill, lodging very great discretionary power in our Federal Courts, always of high character, over the liquidation of the estate as well as the discharge of the bankrupt, and in these respects it differs totally from the so-called Lowell bill, at present

under consideration in Congress, as this last bill places both functions entirely in the hands of creditors. The LOWELL bill is regarded as an exaggerated copy of the most objectionable features of the British Act of 1869. It is a liquidation by arrangement measure, to be applied to all cases of bankruptcy, and, as originally drawn by Judge LOWELL, the career of the bankrupt could not be reviewed for a period exceeding ninety days preceding adjudication in bankruptcy; and in composition settlements no amount of dividend was required from the estate; and a bare majority in value, if only one-third in number of creditors, were empowered to force a settlement upon a majority.

These features have been modified in Congress. Examination has been extended to six months, and a majority in number with three-fourths in value has been substituted to make the bill conform to European usage; but with these improvements everything is left to the creditors, and the Court may be said to have no control over settlements. Minorities have no redress, and public morality is quite disregarded.

This bill is warmly favored by our so-called Boards of Trade, which are not official, as in Great Britain, and which have been aptly styled in Congressional debate as ornamental organizations. It is also supported by a very wealthy and highly respectable class of merchants, limited in number, but potent in influence, whose transactions are large in volume and in value, and are confined to our principal cities. The LOWELL bill, it is said by these parties, will prove *a good collection law*, and the agreement with the Government contained in the bill, that the Government shall, for a commission of one per centum on all sums realized, defray Court expenses, is a good arrangement for the creditor interest, which is no doubt correct.

Much dissatisfaction exists among our large merchants in our principal cities, because of the conflict of State legislation, (*the variation in the insolvent laws of different States,*) and the LOWELL bill, as amended, is supported because it is believed public opinion in our country, uninformed in regard to bankruptcy legislation as it is, and demoralized as it appears to be by bad bankruptcy

laws in the past, will not support such disciplinary measures as exist in Europe, and as are proposed by the Honorable Mr. CHAMBERLAIN in the British Parliament. We trust that our Chamber of Commerce pamphlet on Bankruptcy legislation in England, France and the United States, and this somewhat concise letter, may be of service to Her Majesty's Government, and we remain,

Very respectfully yours,

McKESSON & ROBBINS,

By D. C. ROBBINS.

OOD GOVERNMENT.

EAL OF PETER COOPER, NOW IN THE 91ST
EAR OF HIS AGE, TO ALL LEGISLATORS,
EDITORS, RELIGIOUS TEACHERS, AND
LOVERS OF OUR COUNTRY.

BY
PETER COOPER.

rue object of all good government must forever be the organization and execu-
l constitutional laws, that are necessary and proper to "establish justice . . .
nd promote the general welfare" of the nation.

NEW YORK:
J. J. LITTLE & CO., PRINTERS,
10 TO 20 ASTOR PLACE.
1880.